

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 18-CR-120 (ADM/KMM)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**DEFENDANT'S PRETRIAL
MOTION FOR RETENTION
OF AGENTS' NOTES**

DWIGHT FREDERICK BARNES,

Defendant.

The defendant, Dwight Frederick Barnes, by and through his attorney, Andrew Garvis, pursuant to Title 18, United States Code, Section 3500 *Brady v. Maryland*, 373 U.S. 83 (1963), and Rule 16 of the Federal Rules of Criminal Procedure, moves the Court for an Order requiring any law enforcement agent, including any confidential reliable informants, to retain and preserve all rough notes taken as a part of their investigation, whether or not the contents of such rough notes are incorporated in official records. In addition, defendant moves for an order directing any and all officials involved in this case to preserve the evidence seized in the course of their investigation. Defendant so moves on the following grounds:

1. Rough notes are considered statements within the meaning of Title 18, United States Code, Section 3500(e)(1); *United States v. Bernard*, 607 F.2d 1257 (9th Cir. 1979); *United States v. Gaston*, 608 F.2d 607 (5th Cir. 1979).
2. Destruction of rough notes by law enforcement officials usurps the judicial function of determining what evidence must be produced. *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976).

3. The rough notes may contain facts favorable to the defense.
4. The evidence seized is directly relevant to issues ranging from defendant's guilt or innocence to sentencing considerations. Its inspection and use as provided for under Rule 16(c) of the Federal Rules of Criminal Procedure, will be rendered impossible if is altered or destroyed.

This motion is based upon all files, records and proceedings herein.

Dated: November 15, 2018

Respectfully submitted,

s/ Andrew S. Garvis

Andrew S. Garvis, Att'y #257989
Koch and Garvis, LLC
3109 Hennepin Avenue South
Minneapolis, MN 55408
612-827-8101
andrew@uptownlawyer.com